Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
Applications for Consent	)	
to the Transfer of Control of Licenses	)	
Section 214 Authorizations from	)	CC Docket 98-141
	)	
AMERITECH CORPORATION,	)	
Transferor	)	
	)	
to	)	
SBC COMMUNICATIONS INC.,	)	
Transferee	)	

REPLY COMMENTS OF CORECOMM NEWCO, INC. IN OPPOSITION TO APPLICATION FOR TRANSFER OF CONTROL

CoreComm Newco, Inc. ("CoreComm") respectfully submits these reply comments in opposition to the transfer of control from Ameritech Corporation ("Ameritech") to SBC Communications Inc. ("SBC"). In CoreComm's view, nothing in the initial comments would justify allowing the creation of the local exchange giant contemplated by SBC and Ameritech. To the contrary, the overwhelming majority of comments demonstrated that approval of this merger as currently proposed would have substantial anti-competitive consequences. The arguments in comments supporting the merger are invalid, as is shown below.

1. Failure to qualify for Section 271 approval will bar the merged company from offering the type of competition it claims as the principal benefit of the merger. In Comments of CoreComm Newco, Inc. In Opposition to Application for Transfer of Control ("Initial Comments"), filed October 15, 1998, CoreComm observed that the principal claimed benefit of the merger – that the merger would afford the combined company the resources necessary to institute a significant

competitive campaign in the regions of other ILECs – was not credible because each entity already has the resources to engage in such a campaign without such a merger. Initial Comments at 14-16. Shell Oil, a customer of SBC's local services, supports the merger on the grounds that "there are important telecommunications needs of the company, which SBC today is unable to satisfy." Initial Comments at 14-16. Shell Oil letter of October 1, 1998. But the only example Shell Oil cites is that it did not consider SBC "in its most recent solicitation of bids to provide Shell's *long distance* voice and data service because of SBC's inability to provide service in certain areas of the United States." Id. (emphasis added). The inability of Shell and other large corporate customers to obtain in-region long distance service from SBC or Ameritech would not be addressed by approval of the proposed merger. Neither SBC nor Ameritech can offer in-region long distance service to their large corporate customers until they obtain authority to do so under Section 271. Permitting this merger would not address that deficiency.

As CoreComm also pointed out, both Ameritech and SBC have engaged in a pattern of conduct resisting the market-opening measures required by the Telecommunications Act of 1996. Initial Comments at 3-12. This conduct has precluded both companies from obtaining approval under Section 271, and it is fair to presume that the merged company will continue the same pattern of conduct. If large corporate customers (like Shell) want a carrier that can offer a total package of services, they need a carrier with Section 271 approval. Until the Commission has been presented with substantial evidence that SBC and Ameritech have changed their corporate philosophy, there will be no basis for it to provide the merged company with Section 271 approval, and therefore no basis to conclude that the merged company will be able to offer a total package of telecommunications services to customers like Shell.

2. The merger will harm, not protect, residential and small business customers. The Comments of the Communications Workers of America (CWA) argue that the merger will serve the public interest because, if SBC and Ameritech cannot follow their large corporate customers out-of-region, they will lose this profitable business to competitors and thus will be unable to maintain the level of investment needed to support the public switched network and provide an adequate level of universal service. CWA Comments at 3.

While this argument contains the same flaw as Shell's (a post-merger SBC/Ameritech will not be able to fully serve the large corporate customers until it qualifies for Section 271 approval), there is another fundamental flaw in the CWA Comments. They are premised upon the notion that large corporate customers should pay supra-competitive rates, thus subsidizing the rates of other customers. This premise is flatly contrary to the rationale of the Telecommunications Act of 1996, which is that competition should drive prices to a competitive level, thus eliminating implicit subsidies and making universal service support "explicit." 47 U.S.C. § 254(e). If the Act is to succeed in achieving its goals, emerging competition for the local business of the large corporate customers of SBC and Ameritech must necessarily drive those customers' rates down to competitive levels, eliminating them as a source for subsidizing other customers.

Moreover, as pointed out in CoreComm's Initial Comments (at pp. 14-16), SBC and Ameritech already have the resources to follow their large corporate customers out-of-region, and can be expected to do so even without the merger if such an effort is necessary to protect the "profitable core" of their in-region business.

Indeed, far from protecting residential and small business customers as CWA argues, the merger will likely harm such customers. If the merged company in fact implements the "National-

Local Strategy" that SBC and Ameritech promise, it will be engaged in a very risky venture. SBC and Ameritech concede that the business plan for this venture "contemplates having a cumulative negative cash flow for nearly ten years." Kahan Aff't ¶ 80. They also concede that "[t]he remaining business operations of the new SBC must carry these negative cash flows." Id. In practice, that means the residential and small business customers of SBC and Ameritech will have to finance this new venture. Quality of service , both to end users and to wholesale customers (CLECs) will also inevitably suffer. This concern is supported by a recent preliminary report of the Staff of the Public Utilities Commission of Ohio (copy attached as Exhibit A), which recounts how Ameritech service quality "seriously declined" following a previous corporate restructuring in Ohio and expresses a concern that a similar decline will ensue from this merger. Exh. A at 7. The lessened quality of service provided by SBC/Ameritech to CLECs will also have an adverse downstream effect upon CLECs' ability to serve their own end user customers, and hence upon their ability to compete.

As CoreComm described in its Initial Comments (at pp. 3-12), SBC and Ameritech have reacted to the prospect of competition envisioned by the Telecommunications Act of 1996 by exerting successful efforts to ensure that their within-region customer base, including residential and small business customers, is not exposed to competition. Approval of the proposed merger would create a substantial risk of exacerbating this problem by emboldening SBC and Ameritech to redouble these efforts so that customers within the merged company's larger region will remain a source of monopoly profits which the merged company could use to finance its risky and expensive out-of-region ventures.

The Kansas Corporation Commission expresses concern that large expenditures called for by the "National Local Strategy" will divert SBC's resources from its current markets and "cause deterioration of the quality of service for in-region states such as Kansas." Comments of the Kansas Corporation Commission at 2. That concern is well-taken, as evidenced by the Ohio Staff's recent preliminary report concerning the potential impact of the merger on service quality. Exh. A at 7. The Staff of the Illinois Commerce Commission, in recent testimony, has also expressed concern that service quality will deteriorate as a result of the merger. See Exhibit B at 9 (expressing concern that high-pressure sales tactics used by SBC in California will be employed by Ameritech personnel after the merger). In the absence of effective competition, which does not now exist, customers cannot turn to competitors if the incumbent attempts to extract a monopoly profit to underwrite an out-of-region venture. As long as SBC and Ameritech keep their markets closed to competition, this limitation on competitive alternatives may leave small business and residential customers with no choice but to bear the cost of a risky and expensive out-of-region venture that, even if it succeeds, would not bring them any benefit.

3. <u>Out-of-region competition by the merged company will not reach residential and small business customers</u>. CoreComm's Initial Comments (at pp. 13-14) argued that the merged company's "National-Local Strategy" is focused on the market for large business customers, not on the market for small business and residential customers. Although SBC and Ameritech contend that they will compete for residential and small business customers as well, Citizens for a Sound Economy Foundation (Citizens) concedes that this commitment cannot be enforced and will not be fulfilled unless the merged company finds it profitable to do so. Citizens nevertheless speculates that the merged company will, in fact, find it profitable to pursue these customers in order to maximize throughput for the out-of-region networks it will build to service its large corporate customers. Comments of Citizens for a Sound Economy Foundation at 25-26.

The flaws in Citizens' theory become evident when one examines the experience of the past few years. Other CLECs have in fact built their own facilities to serve large corporate customers and have had the same incentive to pursue small business and residential customers to maximize throughput. Nevertheless, these efforts have not yet resulted in any significant competition for residential and small business customers, principally because it is still necessary for any CLEC to lease unbundled loops or offer resold service in order to compete successfully for such customers, and ILECs like SBC and Ameritech have been highly successful in keeping competition based upon access to UNEs or resale at insignificant levels.[1] There is no reason to believe that SBC/Ameritech's "National Local Strategy" (which concededly would rely upon leased loops to reach small business and residential customers) will be any more successful at overcoming ILEC resistance than other CLECs have been. The solution to the problems of local competition is to enforce the market-opening requirements of the Telecommunications Act of 1996 — not to approve an anti-competitive merger on the basis of a dubious promise that the merged company will successfully become a significant local competitor in markets where other large and well-financed CLECs have not yet been able to overcome the incumbent's resistance to market-opening measures.

4. <u>Small business and residential customers in-region will not benefit from competition from other ILECs</u>. CWA also argues that SBC/Ameritech's promised competitive foray into other

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[1] For example, data maintained by the FCC show that the percentage of access lines that SBC and Ameritech furnished to CLECs, either via resale or via unbundled network elements, as of June 30, 1998, is in the range of 2% of the ILECs' total access lines. http://www.fcc.gov/ccb/local_competition/survey/responses/. At pages 3-12 of CoreComm's Initial Comments, filed October 15, 1998, CoreComm provided some evidence as to the specific conduct of SBC and Ameritech that has resulted in the inability of CLECs to gain any significant market share in their territory.

ILECs' territories will inevitably bring a retaliatory response, benefitting residential and small business customers within the SBC/Ameritech region. CWA Comments at 5. As pointed out in CoreComm's Initial Comments (at p. 13), however, when there are a small number of large firms dominating a market, they are unlikely to compete against each other out of fear of the consequences of competitive retaliation. Even if SBC/Ameritech feels it necessary to pursue its large corporate customers out-of-region to protect this business from other competitors, it is unlikely to expand this effort to capture residential and small business customers, because – in addition to all the other problems in pursuing this type of customer – it will face the risk of a retaliatory response.

5. The merger will not make the merged company more receptive to market-opening measures. Citizens also suggests that the merged company will drop its resistance to market-opening measures in region because it will have to rely upon unbundled elements to compete for residential and small business customers out-of-region. Citizens Comments at 29. In practice, Citizens's argument makes no sense. SBC's and Ameritech's present in-region market share is close to 99%. There is no reason to believe that SBC/Ameritech would jeopardize its present 99% share of local business throughout the vast region the merged company would control, merely in order to improve its chances to garner a much smaller share of the residential and small business customers in the limited out-of-region markets targeted by the "National Local Strategy."

6. The merger will adversely affect local competition. Finally, Citizens argues that there will be no adverse effect on competition, because SBC and Ameritech do not compete (with the exception of a few situations which can be addressed through divestiture) and do not plan to enter each others' markets. Citizens Comments at 5-7. In its Initial Comments (at pages 5-12), CoreComm argued that there would be an adverse effect on competition because the merged

company would be dominated by SBC's corporate culture which is totally resistant to competition. This argument is supported by the Ohio Staff preliminary report, which concludes that "the merger drastically raises the level of concern associated with OSS and the potential for anti-competitive behavior." Exh. A at 3. The Ohio Staff said, among other things, that it is "concerned with information that suggests SBC's OSS performance may be even worse than Ameritech's" and is concerned that "the SBC level of OSS will be reflected in the Ameritech OSS systems." Exh. A at 4. Ohio Staff is also concerned that Ameritech's already laggard performance in dispute resolution, "coupled with SBC's alleged reputation of regularly pursuing litigation as opposed to more expeditious resolution processes . . . raises the concern that resolution of disputes after the merger may be even more protracted." Exh. A at 11-12, 14. Moreover, the practical implication of the cost-savings alleged by the proponents of the merger is that there will be layoffs and other cutbacks in staffing that will inevitably result in a further deterioration in the level of OSS support that SBC and Ameritech provide to their CLEC customers.

Citizens' argument that SBC and Ameritech are not potential competitors is also refuted by recent testimony by the Staff of the Illinois Commerce Commission (attached as Exhibit C) in which the Staff witness concluded "that SBC would have become a competitor to Ameritech Illinois for local exchange service except for the proposed merger." Exh. C at 24. The testimony gives detailed support for that view, focusing on SBC's plans to target Cellular One customers in Illinois. Exh. C at 24-32.

CONCLUSION

For the reasons set forth above and in CoreComm's Initial Comments, the application for a transfer of control should be denied. Alternatively, the Commission should inspect the applicants' Hart-Scott-Rodino filings, and set the case for an evidentiary hearing.

Respectfully submitted,

Dated: November 16, 1998

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Exhibit A

Preliminary Independent Staff Proposal Relative to the
Issues Identified by the Public Utilities Commission of Ohio,
filed November 6, 1998 in

Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Public Utilities Commission of Ohio, No. 98-1082-TP-AMT, and Joint Motion of the American Association of Retired Persons and Edgemont Neighborhood Coalition for a Commission-Ordered Investigation of the Proposed Acquisition of Ameritech Ohio by SBC Communications, Inc. and Related Matters, Public Utilities Commission of Ohio, No. 98-1024-TP-UNC

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change Of Control.	)	Case No. 98-1082-TP-AMT
In the Matter of the Joint Motion of the American Association of Retired Persons And Edgemont Neighborhood Coalition for a Commission-Ordered Investigation of the Proposed Acquisition of Ameritech Ohio by SBC Communications, Inc. and Related Matters	)	Case No. 98-1024-TP-UNC

PRELIMINARY INDEPENDENT STAFF PROPOSAL RELATIVE TO THE ISSUES IDENTIFIED BY THE PUBLIC UTILITIES COMMISSION OF OHIO

I. INTRODUCTION

Pursuant to the Public Utilities Commission of Ohio (Commission) entry of October 15, 1998, wherein the Staff of the Public Utilities Commission of Ohio (Staff) was directed to analyze and evaluate the application filed in the above captioned case in light of the issues identified in the entry, the Staff presents this proposal as an independent preliminary analysis of the application, as it now stands before the Commission. This Staff proposal in no way supplants questions or concerns raised by the Commission in its October 15, 1998, entry. The proposal is intended to provide the Commission with assistance in its deliberations of the issues in this case.

The Staff believes the proposed merger of Ameritech Corporation and SBC Corporation (Applicants) raises several concerns relative to the issues set forth by the Commission in its entry of October 15, 1998. After a preliminary review of the application and the comments filed in this docket, Staff believes the application, as it currently stands, does not adequately demonstrate how the merger would promote the public convenience. It is important to understand that for the purposes of this preliminary review, Staff assumed that, in order to promote the public convenience, the merger must do more than hold the public harmless or simply maintain the status quo. Staff believes that, in order to "promote" the public convenience, the public must be better off after the merger than before the merger. Staff believes the application, as it currently stands, does not demonstrate how the public convenience would be better off after the merger. We do not dispute that the merger may benefit some national business customers. The proposed merger may enable the Applicants to "create a company with scale, scope, managerial, technical and financial resources" to take advantage of the move toward "globalization of the marketplace." However, Staff believes that the merger, as announced, creates some potential concerns to competition as well. In order for the merger to promote the public convenience, Staff believes the benefits of the merger must outweigh the potential harms.

Staff has examined the issues set forth by the Commission. Upon our preliminary investigation, Staff believes the concerns raised by the merger can be grouped into the issue categories identified by the Commission in its October 15, 1998, entry. Below we have briefly described why Staff believes the proposed merger raises each of the concerns and, generally, what can be done to eliminate or minimize the concerns. This proposal identifies preliminary Staff concerns related to the issues identified by the Commission. Parties should consider the Commission's questions and concerns identified in the entry, as well as the proposals set forth herein when preparing testimony.

II. OPERATION SUPPORT SYSTEMS

Adequate operation support systems (OSS) are crucial to the development of a competitive marketplace. OSS is the choke point of competitive entry. If an incumbent local exchange carrier's (ILEC's) OSS is not provisioned in an adequate manner, the new entrant carrier (NEC) has little, if any, hope of providing a competitive service. Staff believes that OSS is an area in which an ILEC may very easily engage in anti-competitive behavior. There have been a number of informal complaints that Ameritech has failed to provide an adequate OSS. There is also concern that Ameritech may not be providing service (via OSS) at the same level or on parity with the level it provides to itself. Staff is not suggesting that the concerns related to OSS have arisen solely as a result of the proposed merger. OSS is an issue that has been and must continue to be addressed in other forums and proceedings, such as Case No. 96-702-TP-UNC, Ameritech's Section 271 competitive checklist proceeding. However, Staff believes that the merger drastically raises the level of concern associated with OSS and the potential for anti-competitive behavior.

Ameritech already has centralized all of its competitive carrier-to-carrier OSS functions into a couple locations in the Ameritech region. With the merging of the Applicants, there is a concern that eventually the corporation will further centralize the OSS functions by creating one OSS center for all the merged companies. If the centralized operation were moved out of the existing Ameritech region, then the carriers operating in Ohio would have even more distant access to Ameritech's OSS functions than they do today.

Staff has received a number of informal complaints regarding Ameritech's OSS system. Staff has been working with the NECs and Ameritech to address these issues. While it is our belief that Ameritech is in the process of trying to improve its system, we have a concern that the merger may slow or prevent the implementation of any improvements. It is reasonable to assume that SBC will want to analyze existing Ameritech systems and make changes. We are concerned that the merger may result in a corporate decision to standardize the OSS operations even if the operations are not further centralized. If SBC's systems do not operate with the same protocols as the Ameritech OSS, then carriers using Ameritech's OSS will likely have their service affected as new protocols and standards are put into place and the learning curve is restarted. We are concerned with information that suggests SBC's OSS performance may be even worse than Ameritech's. If this is the case, then the merger raises a major concern that the SBC level of OSS service will be reflected in the Ameritech OSS systems.

Given the paramount significance of adequate OSS and the present concerns with OSS provisioning, any proposal that might exacerbate the concerns with the provision of OSS, demands a high level of scrutiny. Staff believes that any approval of the proposed merger would have to include mandatory OSS performance standards that have strict self-actuating penalties for missed standards. The standards and penalties would have to be clearly defined. Staff also believes that the concerns of further centralization of operations and dramatic changes in Ameritech OSS protocols must be diminished. This might be accomplished if the Applicants committed not to move Ameritech's OSS operations for a certain period. Also, the Applicants should commit to consulting with the NECs and the Commission prior to any movement of operations, in the distant future. While Staff does not want to create an unnecessary barrier to positive changes in OSS, we believe the Applicants should further commit that no protocol changes would occur without significant advance notice to and collaboration with the NEC industry. It is imperative that reliable, fully functional OSS systems be in place for NECs to have a reasonable opportunity to compete.

III. QUALITY OF SERVICE

Under the proposed merger, Staff is concerned that there will be pressures, driven by the need for efficiency gains, to consolidate facilities and resources. It is likely that this consolidation will result in the movement of personnel and facilities to Texas. SBC has indicated a commitment to no net loss of Ameritech employee levels across the five Ameritech states. This commitment would not prohibit Ameritech Ohio employee levels from diminishing as a result of the merger. Neither does this commitment prevent a decline in levels of service for Ameritech Ohio. It is likely that some employees currently engaged in providing service to Ameritech Ohio customers may be redirected to focus on other non-Ohio or non-regulated activities.

SBC's commitment does not prohibit future workforce reductions in the Ameritech states. SBC may be committing for the short-term, but Staff is concerned for the long-term. Specifically, Staff is concerned about the long-term employee and service levels dedicated to Ohio customers. If the proposed merger were to be approved, Staff believes it is reasonable to assume that the merged companies' operations would become more centralized than they are today. Staff is concerned that the focus on quality of service for Ohio's residential customers may be further diluted due to the increased breadth of the corporation's business, the increased focus on competitive opportunities over a substantially broader geographic region, and the increased spatial distance between the corporate decision-making and policy structure (Texas) and the residential customers in Ohio. Staff is concerned that such a focus may result in a degradation of service quality for Ohio's residential customers. This concern is exacerbated by the information that suggests SBC's quality of service record is inadequate in some areas. The proposed merger raises the concern that SBC's business policies and practices that impact on SBC's quality of service may be reflected in the Ameritech Ohio operations. These policies may further compound the difficulties Ameritech has encountered in meeting the Minimum Telephone Service Standards (MTSS).

Staff is concerned that Ameritech Ohio's quality of service may decline as a result of the merger. Between 1993 and 1995 when Ameritech restructured, creating 12 distinct business units and laying off thousands of employees in its five-state region, Ameritech Ohio's service quality seriously declined. This decline was evidenced by soaring consumer complaints and was reflected in Ameritech Ohio's own MTSS reporting to the Commission. The quality of service provided by Ameritech has never recovered to its previous levels. Since 1993, the Commission has initiated Commission Ordered Investigations (COIs) into Ameritech's quality of service. Among the issues covered by these COIs were answer time, installation delays, out-of-service restoral and missed appointments. The most recent COI (Case No. 98-711-TP-COI) concluded with a Commission-ordered audit of Ameritech Ohio's service quality reporting. The audit resulted in numerous changes to the reporting criteria used by Ameritech Ohio. Additionally, the stipulation included requirements for Ameritech Ohio to decrease the number of installations delayed due to lack of facilities and to reduce the number of repeat troubles. Similar issues have arisen in California since SBC acquired Pacific Bell in 1997. Complaints to the California Public Utilities Commission doubled; and problems with answer time, as well as installation and repair delays precipitated a service quality investigation. Staff believes we would be remiss if we did not consider that the proposed merger and any related reorganization could have a similar detrimental effect on the service quality provided to Ameritech Ohio's customers.

Staff is also concerned that the merged corporation may focus most of its energy on more competitive opportunities to the exclusion of less competitive services. Because of issues relating to marketing practices raised by the Office of Ratepayer Advocates of the CPUC and similar observances made in Ohio, Staff believes that the merger, as it currently stands, may exacerbate certain marketing practice concerns. Notably, with an intensified focus on marketing and competitive business, Staff is concerned that there would be less and less of the merged corporation's resources allocated to meeting the service quality needs of Ohio customers who do not have competitive alternatives. Ameritech Ohio has a statutory obligation to comply with the MTSS. Thus, customers must receive satisfactory service quality from the merged corporation. As the application now stands, Staff is not convinced that after the merger, all customers will be guaranteed adequate and equal quality of service. The merged entity could determine that allocating its resources to competitive businesses could result in earnings that by far offset any symbolic and/or substantive penalties that might result from not meeting Ohio's MTSS for residential customers who do not have competitive alternatives.

The Applicants seem to rely a great deal on the argument that "retaliatory entry" will produce consumer benefits such as quality of service. Staff believes it would be unwise to rely on the hope of retaliatory entry. Even if some retaliation takes place, there is no guarantee that all Ameritech Ohio customers will see a quality of service benefit. It is imperative that the Commission continue to protect the captive ratepayers, especially the residential ratepayers, until such time as effective competition can provide the protection. For the reasons enumerated above, it is Staff's position that quality of service for Ameritech Ohio's customers, especially residential customers, and Ameritech's marketing practices must receive special consideration in any review of the proposed merger. Staff believes that any approval of the proposed merger must include a detailed and thorough long-term plan related to quality of service, including a delineation of unacceptable marketing practices. Specifically, the plan should show how the Applicants would meet and exceed service quality standards for Ohio customers, with special attention to residential customers. Such a plan should also include specific and self-actuating penalties for not meeting service quality benchmark commitments or for engaging in unacceptable marketing practices. If the commitments to service quality and the self-actuating penalties were specific and significant enough, such a plan might serve to minimize service quality concerns raised by the proposed merger.

Even after considering the above quality of service issues, Staff is concerned that the proposed merger still presents a significant potential for harm to competition. This, coupled with the likely decline in attention paid to residential customers who do not have competitive alternatives, outweighs any benefits that the merger, as it is now proposed, might create for large national business users.

One way to be more certain that the proposed merger will promote the public convenience is if the merger to increased the provision of residential service by NECs. Increased residential competition will help balance against any inclination the Applicants would have to concentrate their resources on new competitive business opportunities while allowing captive customers in non-competitive areas to suffer lower quality of service. As proposed, Staff believes the merger will enable the Applicants to use the revenues generated from customers who do not have competitive alternatives to advance the Applicants' competitive business ventures without any proportionate benefit to the captive customers. A commitment to provide specific unbundled network elements (UNEs) and combinations in certain geographic areas would be one way to increase the possibility of residential competition and offset the concerns raised by the proposed merger.

Staff believes the law, as it currently stands, requires the provision of shared transport, as defined by the FCC. A commitment by the Applicants to expeditiously provide shared transport, as defined by the FCC, in a very short time frame may increase the likelihood of residential competition. We also believe that the Applicants could agree to specific UNE combinations at specific rates, which will increase the likelihood of residential competition. Staff is aware, however, that even the provision of UNE combinations does not guarantee that NECs will provide residential service. Staff is of the opinion that, should there be an agreement to provision specific UNE combinations, it would be imperative for the NECs to begin providing residential service. The NECs must take a long-term view of being a public utility and begin to offer residential service even if the short-term margins are not as favorable as those in the business market. Providing both shared transport and UNE combinations in certain geographic regions may help to add significant benefit to the merger.

IV. CARRIER-TO-CARRIER

There have been several allegations that suggest that Ameritech and its affiliates have engaged in unequal treatment of these affiliates as compared to non-affiliate carriers. This is a concern with or without the merger. The merger significantly increases the concern. Many of the concerns relative to carrier-to-carrier service quality and anti-competitive behavior are similar to the concerns regarding end user quality of service. To diminish the carrier-to-carrier concerns raised by the proposed merger, Staff recommends that the Applicants be required to commit to specific levels of carrier-to-carrier service quality with specific and self-actuating penalties for failures to meet commitments. Carrier-to-carrier service quality levels should meet or exceed the MTSS. This should include immediate compliance with previous Commission orders in Case No. 96-1175-TP-ORD requiring the amendment of interconnection agreements to address all relevant aspects of the carrier-to-carrier relationship, including recourse provisions. Furthermore, to assure that the Applicants provide the same level of service to non-affiliated carriers as the Applicants provide to themselves and their affiliates, Staff believes the Applicants must commit to regular reporting of the service quality levels. Similarly, Staff believes it is important that the Applicants not provide any interconnection services or UNEs at a level of quality below that which is provided to the Applicants (as NECs) out-of-region.

Staff believes there is increasing information that Ameritech Ohio only reluctantly engages in dispute resolution and is less than fully cooperative. This, coupled with SBC's alleged reputation of regularly pursuing litigation as opposed to more expeditious resolution processes, leads Staff to believe that the merger raises the concern that resolution of disputes after the merger may be even more protracted. In order to diminish that concern, Staff believes that the Applicants should commit to work with the Staff and the NECs to develop highly specific alternative dispute resolution procedures and the Applicants should commit to pursue the specific alternative dispute resolution processes in good faith and whenever possible. The Applicants should also commit to cooperate fully in informal settlement discussions in order to insure timely provisioning of services to Ohio consumers.

V. MARKET POWER

As the Commission noted in its October 15, 1998 entry, NECs, cable companies, and residential consumer groups all allege that the proposed merger will impact their current and future relationship with Ameritech Ohio, either as potential providers or consumers of competitive local service. Staff believes that any approval of the proposed merger would need to include the appropriate tools to mitigate market power in order to allow the development of effective competition and thereby promote the public convenience.

The Ameritech Ohio local exchange geographic market retains many of the characteristics of a monopolistic market. This is certainly true of the residential and small business market. Through the end of October 1998, at least, 60 facilities-based and reseller new entrants were certified to provide local service in the Ameritech Ohio service area, only 14 market participants report they are "operational." Even those that are known to be operational may be serving only a portion, but not necessarily all, of their approved service area. In addition, of those operational facilities-based NECs, none are providing residential service.

Staff believes that the merger, as it is currently proposed, may increase Ameritech Ohio's market power dominance and may present a significant additional barrier to the emerging competitive market. Both the Applicants claim that, with a minor exception on the part of Ameritech, neither has a significant presence in the other's local market. However, the Commission noted in its October 15, 1998, entry, that SBC had targeted markets in Cleveland, Columbus and Dayton in order to provide a competitive alternative to Ameritech Ohio. Staff's concern is that it appears SBC would have entered the Ameritech Ohio market, absent the merger, thereby diminishing Ameritech Ohio's market power in those geographic markets.

Vigorous competition would challenge the market dominance currently held by Ameritech Ohio and would diminish the opportunities for Ameritech to exercise market power abuse. The Applicants argue that their "national-local strategy" will increase the level of competition and promote the public convenience and necessity in Ohio. They further claim that their combined efforts to compete aggressively in markets outside their merged service territories will result in more concerted efforts by rivals to enter the Applicants' service territories in "retaliation." Staff takes little comfort, however, in promises of retaliation by unknown rivals as an aid to diminishing Ameritech Ohio's local market power, particularly when current market participants attempting to build market share in Ohio appear to be finding market entry difficult even before a proposed merger which would provide Ameritech with additional resources and tools to forestall competition.

Many NECs have become operational only after months of negotiations and/or arbitration for negotiated interconnection agreements with Ameritech Ohio. Once operational, NECs regularly inform Staff that they are having serious difficulties in receiving timely and adequate service from Ameritech Ohio. Such delays constitute barriers to market entry. Staff is concerned that post-merger NECs will find negotiating with Ameritech more difficult than current NECs experienced due to Ameritech's increased market power. Staff believes that, in order to diminish the serious concerns of increased market power dominance, in addition to the Applicants' national-local strategy, any approval of the proposed merger must predicate an "Ohio" strategy for local service competition to diminish Ameritech's existing market power.

Staff believes that any Ohio strategy for diminishing existing market power through elimination of barriers to market entry must address the following issues:

1. process,
2. negotiation and arbitration negotiation,
3. customer service to market participants,
4. implementation, and
5. compliance.

Staff is concerned that the merger not increase Ameritech Ohio's market power dominance. Staff is of the opinion that any approval of the proposed merger must include a commitment by the Applicants to provide Staff with a test of market power to be applied on a forward-going basis such that the Commission can determine whether Ameritech's market power level is maintained, increased, or decreased following the merger, and thereby take any appropriate action in the future. Staff also believes that any approval of the proposed merger should include a clear understanding of what the Applicants would be required to do to address their market power if there appears to be no retaliatory market entry and/or should a post-merger application of the market power test show Ameritech Ohio to have not decreased or to have increased their market power.

VI. COST SAVINGS

Staff considers that the proposed merger and the resultant economies of scale and scope of a merged corporation will result in considerable benefits to the Applicants. The realization of financial benefits could be in the form of an incremental increase in revenues or the achievement of net cost savings. In the latter case, such savings could be realized immediately, or over a period of time, by a variety of actions initiated by the Applicants, including a reorganization of the merged corporation, changes in internal operations, investment in state-of-the-art infrastructure, a conditional response to the forces of the market in which it operates, and so forth. Other realized benefits to the Applicants could include the merged corporation maximizing its presence or entry in competitive markets and/or offering additional competitive services to customers within existing service areas.

Staff believes that the proposed merger will provide the Applicants with great possibilities to achieve economies of scale and scope in various services such as, but not limited to, marketing, customer research, customer service, sales, and billing and collection. The Applicants have enumerated merger-related synergy benefits of $778 million in increased revenue growth, $1.43 billion in cost savings and $300 million with respect to long distance service. The proposed merger raises the question of who should benefit from any net cost savings, which arise as a result of the merger.

The Staff believes that the Applicants have not demonstrated in the application as it currently stands, how the public would benefit from any cost savings resulting from the proposed merger. Staff is of the opinion that to the degree Ameritech Ohio ratepayers in any way contribute to the financial success of the merged corporation, the Ameritech Ohio ratepayers must receive some benefit. Staff is also of the opinion that as long as the Applicants continue to have captive ratepayers without competitive alternatives, such ratepayers should benefit from any increased synergies resulting from the merger. If that benefit is not increased competitive alternatives, then some other benefits must be established. Staff recommends that any approval of the proposed merger should include a definitive plan, by the Applicants, which will ensure the pass-through of benefits to ratepayers should sufficient competitive alternatives not develop for Ameritech Ohio customers.

VII. INFRASTRUCTURE

The proposed merger presents some concerns to Staff regarding Ameritech Ohio's infrastructure. Generally, there are two concerns. The first concern is that the merged entity will begin to allocate resources to infrastructure investments outside of Ohio that might have been invested in Ohio had the merger not taken place. The second concern is that the merged entity will begin to focus its resources on its competitive ventures to the detriment of its captive customers, by maintaining a state-of-the-art network for the customers with competitive alternatives while allowing the network and services of the captive customers to fall into a second-class status.

Staff believes that, in order to eliminate our infrastructure investment concerns, any approval of the proposed merger would have to include requirements that the Applicants maintain the network and services of the customers without competitive alternatives at the same level as the network and services the Applicants provide to customers with competitive alternatives whether or not those customers are in Ohio. A system for defining resource investment benchmarking should also be implemented for infrastructure in Ohio. Any approval of the proposed merger should also establish clear infrastructure reporting requirements. The Applicants should be required to provide Staff and the Commission with a periodic report of network enhancements and technological innovations that have been implemented wherever they offer service. Ohio should be guaranteed that these infrastructure investments and innovations will be deployed and delivered to Ohio's customers as they are being deployed and delivered in other states.

VIII. IN-STATE PRESENCE

The Staff assumes that the proposed merger will result in a consolidation of the Applicants' resources, the movement of decision-making, business practices and regulatory affairs further away from Ohio, and intensified refocusing of the Applicants' attention toward new competitive business opportunities. As these factors could result in eroded quality of service for residential customers, so too, are these factors likely to result in concerns for how and how much the Applicants would invest their resources in Ohio. The issue of tracking dollars would become an even more difficult and complex process than it is today. To minimize these merger-related concerns and ensure that Ohio receives a fair allocation of the Applicants' investment dollars in an environment in which pressures exist for it not to do so, Staff believes that any approval of the proposed merger must include a requirement for the Applicants to determine their earnings and investments on a per access line and customer class basis in Ohio. This figure should then be compared to the earnings and investments on a per access line and customer class basis in all of the other states being served by the merged corporation. Ohio should be guaranteed that in-state financial investments would be, at a minimum, proportionate to Ohio's contribution to the corporation's earnings based on this formula.

Finally, if the merged corporation were to reallocate its resources to its competitive business services and the focus on Ohio's captive customers became diluted by the broadened scope of corporate interests, it is likely that there would be an erosion of Ameritech Ohio's concern for the remaining non-telephone households in the state of Ohio. Any approval of the proposed merger should include a requirement for the Applicants to perform a series of studies to determine the various causes of non-telephone households in Ohio. This research should be conducted under the guidance and review of the Staff and the Commission. The studies should offer concrete conclusions as to the cause of non-telephone households in the State. The Applicants should also commit to specific short-term and long-term, detailed plans to address these problems. The Applicants should identify practices and policies that it will implement over a specific period of time and under Commission review for decreasing the number of non-telephone households in Ohio.

IX. BOOKS AND RECORDS

The proposed merger, along with an increase in competition in the telecommunications industry, would create additional affiliated entities for Ameritech under the new holding company. Staff believes these new affiliates would create an increased potential for inappropriate cross-subsidization, as well as potential anti-competitive activities such as sharing of customer information and inside information. In order to verify that this is not occurring, Staff believes that, to receive approval of the proposed merger, the Applicants would need to agree to make available to Staff, all books and records of Ameritech, the holding company and all affiliates as determined relevant by the Staff in order to meet its regulatory responsibilities.

In addition, if the books and records can not reasonably be made available in Ohio, the Applicants should agree, upon request of Staff, to reimburse the Commission for any expenses incurred in examining the books and records that would not have been incurred if the books and records were located in Ohio.

X. AFFILIATES

SBC has an affiliated IXC, Southwestern Bell Communications Services, Inc. (SBCS) certified to operate in Ohio. Therefore, absent some action, if the proposed merger were approved, the Applicants would be in violation of Section 271 of the Telecommunications Act of 1996 (1996 Act). To eliminate the conflict with the 1996 Act, Staff believes that SBCS will have to abandon its certification as an IXC in Ohio. Eliminating a potential competitor from the market is certainly not a desirable outcome and, in fact, argues against the Applicants' notion that the merger will increase competition, however, Staff sees no other solution.

In addition, the local and IXC certification cases (Case Nos. 96-327-CT-ACE and 96-658-TP-ACE) of Ameritech Communications, Inc. (ACI), should be withdrawn. Staff understands that these certifications have not been approved. However, we see no practical reason to keep these cases open. No part of the existing records in these cases in any way represents the currently proposed structure of the merged companies. Furthermore, Staff believes it would be appropriate to require Ameritech to not only withdraw the certification applications, but to also agree not to seek certification until there is a better understanding that Ameritech Ohio is in compliance with the competitive checklist requirements of Section 271 of the 1996 Act.

RESPECTFULLY SUBMITTED,

On Behalf of the Staff of the Public Utilities Commission of Ohio

Steven Nourse

Steven T. Nourse
Thomas W. McNamee
Assistant Attorneys General
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **PRELIMINARY INDEPENDENT STAFF PROPOSAL RELATIVE TO THE ISSUES IDENTIFIED BY THE PUBLIC UTILITIES COMMISSION OF OHIO** was served by regular U.S. mail, postage prepaid on each party of record, this 6th day of November, 1998.

Steven T. Nourse

Exhibit B

Prepared Testimony of Cindy Jackson, Office of Consumer Programs, Consumer Services Division, Illinois Commerce Commission, in

Joint Application for Approval of Reorganization of Illinois Bell Telephone Company d/b/a/ Ameritech Illinois and Ameritech Illinois Metro, Inc. into SBC Communications Inc., in Accordance with Section 7-204 of the Public Utility Act, Illinois Commerce Commission, No. 98-0555

Q. **Please state your name and business address.**

A. My name is Cindy Jackson, and my business address is 527 East Capitol Avenue, Springfield, Illinois.

Q. **What is your occupation?**

A. I am employed in the Office of Consumer Programs within the Consumer Services Division of the Illinois Commerce Commission ("Commission").

Q **What are your present responsibilities in the Office of Consumer Programs?**

A My responsibilities in the Office of Consumer Programs include reviewing applications and testimony from companies requesting certification to provide local exchange telephone service in Illinois. Specifically, I participate in the hearing process to ensure the applicant's compliance with Illinois statutes and Commission rules and regulations. I was also appointed Staff Liaison by the Executive Director under Section 755.400 of 83 Illinois Administrative Code Part 755 on August 1, 1993 to the Illinois Telecommunications Access Program ("ITAP"). In that capacity, I oversee activities of the ITAP to ensure that they meet all requirements for the Text Telephone ("TT") distribution and Telecommunications Relay Service ("TRS") programs as required in Section 13-703 of the Public Utilities Act ("PUA"). In addition, I was appointed Staff Liaison by the Executive Director under Section

757.300 of 83 Illinois Administrative Code Part 757 on February 13, 1996 to the Universal Telephone Assistance Program ("UTAP"). As Staff Liaison, I oversee the activities of the UTAP to ensure that they meet all requirements of the Lifeline Program, Link Up Program and the Universal Telephone Service Assistance Program ("UTSAP") as required in Section 13-301 and 13-301.1 of the PUA.

Q. **Please describe your occupational experience.**

A. I began my employment with the Commission in September 1974, and I have worked in various Divisions within the Commission. Prior to my position as Staff Liaison, I was the 9-1-1 Program Assistant. Some of my duties included: reviewing 9-1-1 applications to ensure that the Commission's rules and the statute were adhered to, making presentations, and reviewing filings.

Q. **What is the purpose of your testimony?**

A. The purpose of my testimony is to discuss how the SBC/Ameritech proposed merger may impact the quality of service Illinois consumers receive from the reorganized telecommunications carrier. Specifically, I will examine whether the proposed reorganization will diminish Ameritech's ability to provide "adequate, reliable, efficient, safe and least-cost service" pursuant to section 7-204(b)(1) of the PUA.

I. The Reorganized Carrier's ability to provide adequate, reliable, efficient, safe and least-cost public utility service to Illinois Residential Consumers pursuant to Section 7-204(b)(1) of the PUA.

Q. Has SBC addressed the requirements set forth in Section 7-204(b)(1) of the PUA?

A. Yes. Mr. Kahan states on page 24 of his testimony that the merger will not diminish Ameritech's ability to provide adequate, reliable, efficient, safe and least cost public utility service. A commitment was made that employees responsible for providing high quality service in Illinois will be physically located in Illinois. Mr. Kahan also states that the merger will enhance the ability of Ameritech to provide high quality appropriately priced services, not least-cost services.

Q. Do you have any concerns with the reasons for the merger as addressed in Mr. Kahan's testimony?

A. Yes. I am concerned that the focus on winning large corporate customers will take precedence over quality of services offered to Illinois residential customers. Mr. Kahan's testimony focuses on the benefits large corporate customers will receive from the merger of the two companies. (SBC-Ameritech Ex. 1.0, pp. 5-6). Mr. Kahan states that SBC and Ameritech will be able to provide large corporate customers "an opportunity to acquire . . . a single source of telecommunications services . . ." (SBC-Ameritech Ex. 1.0, p.5.) Mr. Kahan has not provided any tangible evidence that the quality of service provided to Illinois residential consumers will not be diminished because of SBC's corporate focus on the demands of large corporate customers.

Instead, Mr. Kahan's testimony concentrates on the benefits big business will receive due to the "scale of economies" and "synergistic benefits" the merger will create and help SBC/Ameritech compete for the business of larger corporate customers. In response to Staff Data Request CJ1.07, Mr. Kahan states that the merger will permit the new company to take advantage of the best ideas, practices and processes developed through the years of experiences by the Southwestern Bell Telephone Company, Pacific Bell and other subsidiaries. (See Attachment 1.) Mr. Kahan also stated that the proposed merger, including the National-Local Strategy, will create scale and scope economies which will lower the cost of maintaining existing services and introduce new products, services and network enhancements and will allow such costs to be spread over a larger customer base. (*Id.*) Lastly, Mr. Kahan stated that the proposed merger, including the National-Local Strategy, will promote competitive prices and improvements in the quality of service for Illinois customers. (*Id.*) SBC contends that once the National-Local Strategy is in place, it will place more switches in Illinois to provide local service to small/medium business and residential customers. (SBC-Ameritech Ex. 1.0, p.7.)

However, Mr. Kahan did not address how or when the residential customers will benefit and gave no commitment that rates would be reduced, calling areas would be improved or expanded, or that the new company would be able to provide additional services not offered by the other telecommunications providers in Illinois. Although Mr. Kahan states that Technology Resources Inc. ("TRI"), a research and development subsidiary of SBC, will be available to assist Ameritech, he does not identify how technology will benefit residential consumers. (SBC-Ameritech Ex. 1.0, pp. 12-14) Based on Mr. Kahan's focus on the large corporate client, I do not find any indication that TRI will increase the quality of service to Illinois residential consumers.

Q. Do you believe that SBC's proposed reorganization of Ameritech will diminish the utility's ability to provide adequate, reliable, efficient, safe and least-cost public utility service as required in Section 7-204(b)(1)?

A. Yes, I do. Mr. Kahan does not comment, commit or guarantee to residential consumers that they will receive any assurances of quality service, other than Ameritech will retain employees in Illinois. Staff agrees with Mr. Kahan that investing capital to build high quality network and providing innovative services and features are important to providing high quality service. However, Staff does not agree that building a high quality network for large corporate customers assures that Illinois residential consumers will receive adequate telephone service. (SBC-Ameritech, Ex. 1, p. 26.) SBC's statement that, "SBC contemplates that it will pursue any cost savings arising from the proposed merger that are feasible and consistent with its commitments," does not appear to include the best interests of consumers, nor does it infer "least-cost public utility service" will be extended to residential consumers. (Staff Data Request CJ1.01D.)

Q. Do you agree with Mr. Kahan's assertion that competition will lead to better consumer service?

A. It may in the long run. However, today, competition in Illinois' local residential market is not prevalent enough to impact residential consumers' quality of service. Further, consumers, in most instances, do not have the option of choosing another company to provide them adequate, reliable, efficient, safe and least-cost service. As a result, it is absolutely critical that SBC specifically explain, using more than general statements, how this proposed merger will allow Ameritech to continue to provide adequate, reliable, efficient, safe and least-cost service.

Q. Did Staff ask SBC and/or Ameritech about proposed savings resulting from the Illinois merger?

A. Yes. In reply to Data Request CJ1.01(D), SBC stated that it has no plans regarding the closing of specific facilities in Illinois or the implementation of any particular consolidations of network operating, telemarketing and/or collection centers that provide service to Illinois customers. (See Attachment 2.) SBC contemplates that it will pursue any cost savings arising from the proposed merger that are feasible and consistent with its commitments. SBC further stated that it has not engaged in post-merger planning and has no substantive information about post merger planning activities and positions. (Staff Data Request CJ1.01D.) Ameritech also stated that it has not engaged in post merger planning and could not provide any substantive information about post merger planning, activities and positions. (See Attachment 3.)

Q. Does Staff believe SBC's and Ameritech should pass along potential benefits to Illinois ratepayers?

A. Yes. Staff Witnesses Marshall and Yow are responding to the potential benefits realized from this merger. I agree with their conclusions that any potential benefits should remain in Illinois to ensure least-cost public utility service to Illinois ratepayers.

Q. In data request response to Sprint, Ameritech indicated that it will utilize the best practices of both companies. Has Ameritech identified the best practices it will utilize if the proposed merger is approved?

A. Yes. In response to Sprint's Data Request 1-27, Ameritech states it will benefit through implementation of a host of SBC's best practices. (See Attachment 4.) These best practices include (in part):

<u>Vertical Features</u>:

- research and development of new products, services and features;

- marketing capabilities and expertise in developing and marketing attractive packages of services;

Directory Publishing:

- improved sales methods;

Centrex and other services:

- marketing of inside wire maintenance plans.

Q. Sprint asked SBC the same question in Sprint Data Request 27. Is Ameritech's data request response to Sprint consistent with SBC's data request response to Sprint?

A. No. Both companies provide different definitions of best practices. As a result, the answers to Sprint's Data Request 1-27 and Sprint Data Request 27 conflict. (See Attachment 5.) Further, in Sprint Data Request 27, SBC indicated that the two companies "have not yet evaluated the practices of each company for the purposes of identifying best practices . . ." *(Id.)* Additionally, in Staff Data request CJ1.05, SBC replied that it did not have a business plan for Illinois and referenced the company's General Statement prepared to answer Staff's questions about future plans. (See Attachment 6.) SBC further stated that it did not know if the specific marketing practices for vertical services that have succeeded elsewhere are appropriate for Illinois, and in the event of a merger, SBC would allow local management to make the decision. (Staff Data Request

CJ1.05.) This is inconsistent with the specific information provided by Ameritech as identified in the previous question and answer.

Based on the different data request responses from both companies, it appears that SBC has already made some decisions regarding marketing practices and may have already dictated its marketing practices to Ameritech's local management, instead of allowing input from Ameritech's management. If SBC mandates to Ameritech the same type of marketing and sales techniques alleged to be used in California, Illinois consumers may be harassed and coerced into purchasing services and features they do not want. Based on my experience dealing with consumers, high pressured marketing practices and sale techniques open the door for slamming and cramming by telecommunication customer service representatives.

Q. What does "slamming and cramming" mean?

A. Sections 13-902(b) and 13-902(c) of the PUA, define slamming as the unauthorized switching of a telecommunications carriers, and define cramming as the addition of unauthorized services to a customers bill. Additionally, Section 10 of the Consumer Fraud and Deceptive Business Practices Act eliminates sweepstakes boxes as a viable form of soliciting authority to provide telecommunications or related services and prevents the use of documents used by consumers to enter sweepstakes as a written authority to execute changes in services or service providers. (815 ILCS 505/211.)

Q. What is your opinion of SBC's marketing practices?

A. I am quite concerned by SBC's marketing practices as demonstrated in California. In his representations of quality of service in California, Mr. Kahan neglects to mention pending complaints before the California Public Utilities Commission ("CPUC") that allege improper sales and marketing techniques being employed by Pacific Bell's customer service representatives. (Attachment 7.) Further, Mr. Kahan does not reference a report and formal complaint by the Office of Ratepayer Advocate ("ORA") filed to the CPUC. (See Attachment 8 and Attachment 9.) In its "Report on Pacific Bell's Handling of Residential Service Ordering," ORA alleges that Pacific Bell is engaging in unlawful marketing and sales techniques. Specifically, the report alleges some customer service representatives provided customers with insufficient information to make an informed decision on discretionary services. (See Attachment 9.)

Q. Do you think Ameritech will benefit from SBC's sales and marketing practices?

A. No. In response to Data Request GCI-AM-1-60 (proprietary), it appears that Ameritech does not need a more aggressive marketing and sales campaign to increase its penetration rates for discretionary services in Illinois. (See Attachment 10.) Despite the fact that Ameritech does not need to increase the penetration of its discretionary services, Ameritech states it will benefit from marketing practices and sales practices for discretionary services. (SBC-Ameritech Ex. 1.0, p. 16 and Sprint Data Request 1-27.) Neither Ameritech, nor SBC have provided tangible evidence that the quality of residential service will not diminish by implementing SBC's best practices in sales and marketing.

A. SBC-Ameritech Reorganization and services to people with disabilities

Q. Does SBC have a history in providing services to people with disabilities?

A. Yes. In response to Staff Data Request CJ1.12, SBC stated that it has a strong record of providing services for and working with the disability community. (See Attachment 11.) In June 1998, SBC adopted a Universal Design Policy, which is a policy statement supporting universal design to make new telecommunications products and services accessible to and usable by individuals with various disabilities. SBC declared that their policy statement is consistent with Section 255 of the Telecommunications Act of 1996 and the Americans with Disabilities Act of 1990.

Q. Do you feel that Illinois citizens with disabilities have access to the same telephone service and features as everyone else within the state?

A. No. In my role as Staff Liaison to the ITAP, I have found that telephone companies do not provide accessible features to people with hearing and speech disabilities, e.g., intercept messages, call waiting, Caller I.D., TTY voice mail, etc. Despite programs sponsored by the telephone companies, such as providing free TTs and Telebrailles for access to telephone service for qualified persons who are deaf, hard-of-hearing, deaf-blind and speech and speech-sight disabled, telephone companies still have not taken any affirmative steps to assess the needs of people with disabilities.

Q. Do you think that SBC's Universal Design Policy is a good policy?

A. Yes, I do. However, I do not know what, if anything, has transpired in California since this policy has been implemented. I am not aware if it has provided any tangible benefits to consumers, and I would like to have a commitment from the companies that people with disabilities will be better served. I would like Mr. Kahan to address this issue in his rebuttal testimony.

Q. Do you think that TRI, could benefit telecommunications consumers with disabilities by designing telephone features that would make telecommunications services more accessible?

Yes. I think that TRI could be an invaluable asset for the research and design of telephone features for people with disabilities. However, I am concerned that this would not be a priority, because SBC could receive more revenue from the design of services, such as high speed data services for the large corporate customer, rather than the small amount of revenue from the vertical features that SBC could market and sell to people with disabilities.

Q. Has Ameritech been active in providing services to people with disabilities?

A. Yes. Ameritech is a member of the Illinois Telecommunications Access Corporation ("ITAC") and an Ameritech employee currently holds the position of President of ITAC's Board of Directors. ITAC is a not-for-profit corporation form by Illinois local exchange companies to administer the TT and Telebraille distribution programs and TRS. Ameritech is actively involved in ITAP and is actively involved in the implementation, development and improvements in ITAC's programs.

Ameritech also has a "Special Needs Center," which sells products to persons with disabilities to connect them to the telephone network or to enhance their accessibility to the telephone network. Staff has received no commitment or guarantee from SBC that this type of involvement by Ameritech and it's employees will continue following the merger. Staff would like to see a specific and verifiable commitment from SBC to make services and features accessible to people with hearing, speech and sight disabilities.

III. Recommendations/Conclusion

Q. In your opinion, has SBC met the requirements of Section 7-205(b)(1) to provide adequate, reliable, efficient and safe service?

A. No. SBC has provided no comment, commitment or guarantee as to the service residential consumers will receive. SBC has not proven that the "best practices of both companies" is in the best interest of consumers or that it meets the requirements of Section 7-204(b)(1). As stated earlier in my testimony, SBC's focus on winning large corporate customers may take precedence over quality of services offered to Illinois residential customers.

Q. If the Commission concludes that the proposed merger should be approved, are there any conditions that you would impose on SBC and Ameritech?

A. I am still evaluating whether there are conditions that could address my concerns regarding SBC's aggressive marketing practices and its lack of specific and verifiable commitments to residential consumers and consumers with disabilities. I reserve the right to incorporate condition(s) into my rebuttal testimony.

Q. Does this conclude your testimony?

A. Yes, it does.

Exhibit C

Excerpts from Prepared Testimony of Christopher L. Graves,
Telecommunications Division, Illinois Commerce Commission, in

Joint Application for Approval of Reorganization of Illinois Bell Telephone Company d/b/a/ Ameritech Illinois and Ameritech Illinois Metro, Inc. into SBC Communications Inc., in Accordance with Section 7-204 of the Public Utility Act, Illinois Commerce Commission, No. 98-0555

ICC Staff Ex. 4.00

PREPARED TESTIMONY

OF

CHRISTOPHER L. GRAVES

TELECOMMUNICATIONS DIVISION

ILLINOIS COMMERCE COMMISSION

PUBLIC VERSION

DOCKET NO. 98-0555

October 28, 1998

Q. Please state your name, occupation and business address.

A. My name is Christopher L. Graves. I am employed by the Illinois Commerce Commission as an Economic Analyst in the Telecommunications Division. My business address is 527 East Capitol Avenue, Springfield, Illinois 62794.

Q. Please state your educational background.

A. I received a Bachelor of Arts degree in Economics from Illinois State University in 1990. Also, I hold a Master of Arts Degree in Economics from Southern Illinois University at Edwardsville which I received in November of 1997.

Q. Please state your professional experience.

A. While studying for my masters degree, I interned with the economics group of the Revenue and Public Affairs Division of Southwestern Bell Telephone Company in St. Louis. As an intern, I researched topics of telecommunications economics and pricing for the staff economists. During the summer of 1996, I worked briefly for INDETEC International as a litigation support analyst. INDETEC is a consulting firm specializing in telecommunications and utilities economics and costing practices.

Q. When did you join the Illinois Commerce Commission?

A. I joined the Commission in October of 1996.

Q. Please briefly describe your work duties with the Illinois Commerce Commission.

A. My responsibilities include reviewing tariff documents and cost studies submitted to the Commission by telecommunications carriers and making recommendations to the Commission regarding those filings; providing economic analysis on pricing and cost issues in dockets before the Commission; and answering inquiries regarding wholesale pricing policies of the Commission. I have provided testimony in the following docketed proceedings: Docket Numbers 96-0503, which is the investigation into GTE's Wholesale Prices ; 96-0404, which is Ameritech Illinois' 271 Compliance Docket; 96-0486, which is the investigation into Ameritech Illinois' Unbundled Network Element Offering; 97-0344, which is the Cable Companies complaint against Ameritech's use of Americhecks; and 97-0552 & 97-0553, which is the investigation of Ameritech's wholesale tariff.

Q: Have you contributed to any articles that have been published in your field of expertise?

A: Yes. I have received research credit on several articles dealing with telecommunications economics. Most recently I was thanked by Steve Parsons for research work on "Cross-Subsidization in Telecommunications" in the March 1998 volume of the Journal of Regulatory Economics[1].

Q: Have you ever given lectures or speeches in your field of expertise?

A: Yes. In July of this year, I was a speaker at an industry workshop on "Competitive Pricing" sponsored by the Institute for International Research.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address the impact of the proposed merger on local exchange competition within Ameritech's service area in Illinois. (Section I). I also evaluate SBC/Ameritech's analysis with regard to the National-Local Strategy. (Section II). Finally, I comment on SBC/Ameritech's theory regarding retaliatory entry. (Section III).

[1] J. Regul. Econ., March 1998, 13(2), pp. 157-82.

businesses that have specialized data needs, soliciting local exchange business and bundled long distance, local, Internet, and data services. However, to my knowledge, there is limited advertising targeting residential and small business customers. Further, I receive several phone calls from consumers on a weekly basis, asking for more information about competitive local exchange carriers.

D. The Proposed Merger's Effect on the Local Exchange Market in Ameritech's Service Area in Illinois

1. Number of Buyers and Sellers

Q. Would the proposed merger affect the number of competitors in Ameritech's Chicago and down state markets?

A. At the present time, SBC does not provide local exchange service in Illinois. Therefore, in terms of eliminating an actual competitor in Ameritech's local exchange markets in Illinois, the proposed merger would not have an effect.

Q: Would the proposed merger affect the number of competitors in a different manner?

A. Yes. Based on the information before me at this time, I feel confident that SBC would have become a competitor to Ameritech Illinois for local exchange service except for the proposed merger. As a result, the proposed merger will eliminate a potential competitor in the local exchange market.

Q: On what information do you base your opinion?

A: In October of 1996, in the California SBC/Pacific Telesis merger proceeding, SBC witness, Mr. Kahan, testified:

> [W]e have concluded that it would make sense to enter the local exchange market in Chicago but not in Los Angeles. In Chicago, we have a extensive wireless network consisting of 10 switches and over 600 cell sites. That network also includes extensive backbone network of microwave, leased facilities, and connections to a SONET ring. This network is supported by a sophisticated billing system, a responsive care unit, as well as sales and distribution marketing, accounting finance, installation and maintenance and other personnel who reside in and understand the Chicago market. In addition, we have a well recognized brand name since we operate under the Cellular One name in Chicago. We also have a large existing customer base to which we send bills every month and to whom we could market services. [8]

Q: Do you base your opinion on any other facts?

A: Yes. SBC has a number of certificates to provide service in Illinois through its affiliates and/or subsidiaries. Table 1 lists those affiliates and/or subsidiaries.

Name of Entity	Docket No.	Date of Order	Authority
Southwestern Bell Mobile Systems, Inc. d/b/a Cellular-One, Chicago	88-0339	12/9/88	Domestic public cellular radio telecommunications services in the Greater Chicago Metropolitan Area

[8] California Public Utilities Commission, 96-05-038, In the Matter of the Joint Application of Pacific Telesis Group ("Telesis") and SBC Communications Inc.("SBC") for SBC to Control Pacific Bell, Rebuttal Testimony of James S. Kahan (SBC), October 15, 1996, at 2.

Southwestern Bell Mobile Systems, Inc.	92-0067	4/29/92	Domestic public cellular radio telecommunications services in Illinois RSA 2
Southwestern Bell Mobile Systems, Inc.	91-0054	4/10/91	Domestic public cellular radio telecommunications services in Illinois RSA 5
Texas/Illinois Cellular Limited Partnership	95-0210	08/16/95 as amended 09/13/95	Domestic public cellular radio telecommunications services in Illinois RSAs 4 and 6
Champaign CellTelCo	88-0084	5/11/88	Domestic public cellular radio telecommunications services in Champaign-Urbana-Rantoul, Illinois CGSA
SBMS Cellular Telecommunications Bloomington, Inc.	89-0287	3/21/90	Domestic public cellular radio telecommunications services in the Bloomington-Normal, Illinois CGSA
Decatur Cellular Telephone Company, Inc.	89-0510	5/9/90	Domestic public cellular radio telecommunications services in Decatur, Illinois CGSA
SBMS Cellular Telecommunications Springfield, Inc.	89-0511	5/9/90	Domestic public cellular radio telecommunications services in the Springfield, Illinois CGSA
Eastern Missouri Cellular Limited Partnership	91-0241	8/7/91	Domestic public cellular radio telecommunications services in those parts of the Greater St. Louis Metropolitan Area located in Illinois
SBMS Illinois Services, Inc.	95-0347 97-0118 expanded	12/20/1995 5/21/97 expanded	Authority to provide facilities-based and resold local exchange service expanded to all parts of Illinois served by Ameritech, Sprint and GTE and facilities-based and resold interexchange service in Illinois

Southwestern Bell Communications Services-Illinois, Inc.	96-0087	3/13/96	Authority to provide resold interexchange service in Illinois.
Southwestern Bell Communications Services, Inc. (calling card)	96-0493	12/4/96	Authority to provide resold interexchange service in Illinois.

Based on this information, SBC's affiliate Southwestern Bell Mobile Systems (SBMS) is authorized to offer facilities based and resale based local exchange service in Illinois. In April of 1997, SBMS filed an Application to expand the geographic scope of its § 13-405 Certificate of Service Authority to provide facilities based local exchange service within all portions of the state of Illinois served by Illinois Bell Telephone. In that proceeding, Dane Ershen of SBMS Illinois Service, Inc. stated that SBC would use the certificates to compete with Ameritech Illinois by providing facilities based local exchange service directly in competition with Ameritech Illinois:

> While the constantly changing events have slowed us down, I believe it has allowed us to better refine our plans and has led to the decision to seek expanded certificate authority since we believe we can begin providing service in other geographic areas of the state outside of the Chicago metropolitan area. Hopefully, unless other intervening events slow us down, we will be able to begin providing service initially in Chicago and subsequently elsewhere within the next few months. At this point, it is our intention to initially resell service of other carriers and may subsequently deploy our own facilities based on market conditions.[9]

[9] ICC Docket No. 97-0118, Testimony of Dane Ershen on behalf of SBMS Illinois Services, Inc., pp. 7-8.

Q: Do you base your opinion on any other factors?

A: Yes. In addition to the aforestated certification, as seen in Table 1 above, SBC's subsidiaries have obtained a number of certifications to provide commercial mobile radio service in Illinois.

Q: Has SBC or any of its affiliates and/or subsidiaries entered into any interconnection agreements in Illinois?

A: Yes. SBC, through certain affiliates, has two approved interconnection agreements in the state of Illinois. The approved agreements are as follows:

- 96 NA-008: Ameritech and Southwestern Bell Mobile Systems, Inc. et. al.
- 97 NA-033: Ameritech Illinois Metro and Southwestern Bell Mobile Systems, Inc.

These agreements set the terms and conditions under which SBC, through its affiliates, can interconnect with Ameritech's network in order to provide cellular mobile radio services ("CMRS") services within Illinois.

Q: What is the significance of SBC's cellular operations in Illinois?

A: The significance is that SBC already has in excess of XXXXXX customers and XXX company owned stores in Illinois.[10] Also, SBC has established facilities to serve these customers that consist of switches and trunks as well as billing and support procedures. SBC could use these facilities to provide local exchange service and, as a result, incur less sunk costs to

[10] DR response to RTY-8.05, SBCAMIL 007198

enter the market than most other potential competitors.

Q: Do you base your opinion that SBC would enter Ameritech Illinois' service territory to compete in the provision of local exchange service on any other factors?

A: Yes. SBC's 1997 Annual Report states:

> Our customers tell us they want one-stop shopping – all telecommunications services, including local, long distance, data and wireless services – from one company. Our goal is to provide these services.[11]

Then, the report goes on to analyze wireless market strategies, stating:

> **Market Characteristics** . . . Wireless customers are typically high-value telecommunications service customers who purchase significant amounts of local, long-distance, and Internet service. . . Wireless providers will pursue varying strategies: some will focus purely on wireless service offerings, others will try to offer a full array of local, long-distance, and wireless service through resale agreements. . . **Cellular One Wireless Strategies** . . . Attract new wireless customers by offering long-distance service. . . Promote local landline service to those customers who will also buy wireless and long-distance service. . . Leverage our extensive agent distribution channel, and incorporate direct and retail channels where cost effective. . . Southwestern Bell Mobile Systems Wireless Strategies . . . Leverage brand names.[12]

Q: Do you base your opinion on anything else?

A: Yes. In a May 1, 1997 memo, Charles Lee of SBC wireless division stated that

[11] SBC Attachment 2, SBC's 1997 Annual Report to Shareholders, p. 17.
[12] SCB growth profile 97, pp. 35-36.

"XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXX[13] Further, the current website describing CellularOne's service in Illinois mentions the fact that "the company has received approval to provide local phone service (Attachment 2)." It is unclear why that fact would be mentioned if they did not plan to offer local service.

Q: What else is your opinion based on?

A: SBC has assets that would provide it with a competitive advantage that other actual and potential competitors do not have. Many of these assets come from the fact that SBC is a local service provider in its incumbent territory. SBC's experience in providing local exchange service gives it the unique advantages of having expertise in negotiating and arbitrating interconnection agreements and knowing how to serve local customers. Also, of great significance, is the fact that SBC is the incumbent local exchange service provider in the St. Louis, Missouri area and, as a result, many residents on the Illinois side of St. Louis should know SBC's brand name and identify it with local service. As I discussed above in relation to sunk costs, one of the barriers to entry that new competitors face is significant advertising costs in order to obtain brand name recognition. SBC already has this recognition to some extent in the St. Louis area.

[13] Data Response to GCI-SBC-2-28, p. SBCAMIL 011979.

Accordingly, SBC is a more likely potential entrant in the Ameritech's service territory than relatively smaller and unknown competitors.

And, as I mentioned above, SBC's cellular affiliate, Cellular One, has an extensive customer base within Illinois. SBC has expressed the opinion that customers want one stop shopping. It would be easier for SBC to win over its already existing cellular customers to a bundled cellular, local and long distance package. Accordingly, it would likely be easier for SBC to win certain customers than other providers that do not have the same advantage.

Q: You mentioned that SBC is a more likely potential provider than smaller market participants. But, is SBC a more likely, significant competitor than larger, more well-known telecommunications carriers such as AT&T and MCI?

A: Yes. While I do not discount the degree of competition that AT&T and MCI add to the market, the significant advantage that SBC has over those carriers is experience in serving the local exchange market.

Q: But, SBC's officers and employees have stated in the context of this proposed merger that SBC does not plan on entering Ameritech Illinois' territory to compete in the provision of local exchange services absent the proposed merger[14]. How do you respond?

A. In reviewing the available information, it is clear to me that SBC would have had to enter the local exchange business in the state of Illinois at some point to maintain its wireless customers and to ensure the highest return on its strategic assets (switching and trunking equipment, goodwill, wireless customers base, ect.) to its investors.

Q. What is your conclusion with regard to this aspect of the competitive market?

A. I conclude that the proposed merger will eliminate a significant potential competitor in the local exchange market.

2. Product Standardization

Q: In your opinion, would the proposed merger have an effect on the standardization of the product of local exchange service?

A: I do not believe that it will.

3. Barriers to Entry and Exit

Q: In your opinion, would the proposed merger increase barriers to entry and exit?

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[14] Merger of SBC Communications Inc. and Ameritech Corperation: Description of the Transaction, Public Interest Showing and Related Demonstrations, Affidavit of Stan Sigman, Filed with the FCC July 24, 1998, p.001-00280.

CERTIFICATE OF SERVICE

I, Eric J. Branfman, hereby certify that on November 16, 1998, a true copy of **Reply Comments of CoreComm Newco, Inc. In Opposition To Application For Transfer of Control** was served on the following people via United States Postal Service first-class mail, postage pre-paid. Those persons marked with an asterisk were served by hand delivery.

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